

Nos. 2014-1516, -1530

**UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT**

SYNOPSYS, INC.,

Appellant,

v.

MENTOR GRAPHICS CORPORATION,

Cross Appellant.

ON APPEAL FROM THE PATENT AND TRADEMARK OFFICE,
PATENT TRIAL AND APPEAL BOARD, CASE NO. IPR2012-00042.

**UNOPPOSED MOTION OF SYNOPSYS, INC. FOR AN
EXTENSION OF TIME TO FILE ITS OPENING BRIEF**

Pursuant to Federal Circuit Rule 26(b), Appellant Synopsys, Inc. respectfully requests an extension of sixty days to file its opening brief. Synopsys's opening brief is currently due on August 4, 2014. If this motion is granted, the brief will be due October 3, 2014. Cross-Appellant Mentor Graphics Corporation ("Mentor") has informed the undersigned counsel for Synopsys that Mentor is unopposed to this

motion. This is Synopsys's first request for an extension of time in this appeal.

In support of this motion, Synopsys states as follows:

1. This is an appeal from the newly created *inter partes* review process established by the America Invents Act in 2011. Synopsys petitioned the Patent Trials and Appeal Board (the "Board") to institute *inter partes* review of claims 1-15 and 20-33 of U.S. Patent No. 6,240,376 ("376 patent"), titled "Method And Apparatus For Gate-Level Simulation Of Synthesized Register Transfer Level Designs With Source-Level Debugging." Mentor is listed as the assignee of the patent.

2. The Board instituted *inter partes* review as to claims 1-9, 11, 28, and 29 on the ground that there was a reasonable likelihood that those claims were anticipated by a U.S. Patent No. 6,132,109 ("109 Patent" or "Gregory"), which is assigned to Appellant Synopsys.

3. At the conclusion of its review, the Board issued a final decision in which it canceled claims 5, 8, and 9 of the '376 patent but declined to

cancel claims 1-4, 6-7, 11, 28, and 29. Both Synopsys and Mentor have appealed.¹

4. Synopsys's opening brief is due August 4, 2014.

5. This is Synopsys's first request for an extension of time.

6. This extension is warranted due to the complexity of the case and the press of preparation for trial in the district court regarding, among other patents, the '376 patent at issue in this appeal. While the Board canceled claims 5, 8, and 9 of the '376 patent, the Board did not cancel claims 1-4, 6-7, 10-15, or 20-33.

7. In addition to petitioning for *inter partes* review, in 2012, Synopsys sued Mentor for a declaratory judgment of non-infringement and invalidity in the Northern District of California, in a case involving, among others, the '376 patent. Mentor counter-claimed for infringement. The case has since been transferred to the District of

¹ Mentor filed a suit in the Eastern District of Virginia under the Administrative Procedures Act ("APA"), challenging the Board's decision to institute *inter partes* review. The district court dismissed the suit and Mentor has appealed that judgment to this Court. *Mentor Graphics Corp. v. Lee*, No. 13-1669 (Fed. Cir.). This Court recently consolidated the instant appeal and Mentor's APA appeal. *Id.* at dkt. 34. Mentor has since filed an unopposed motion to stay its APA appeal and have that appeal and this instant appeal de-consolidated. *Id.* at dkt. 35.

Oregon and consolidated with other cases pending between the two parties. *Synopsys, Inc. v. Mentor Graphics Corp.*, No. 3:13-cv-579-MO (D. Or.). Trial is scheduled for September 23, 2014. Currently, the parties are briefing competing motions for summary judgment.

Throughout August and early September, proposed jury instructions and verdict forms, oppositions thereto, trial memoranda, lay witness statements, and expert reports are all due to be filed.

8. This extension is further warranted due to the press of other matters, including matters before this Court. Mr. Eric Shumsky, lead counsel for Synopsys in this appeal, is also counsel for Carnegie Mellon University in *Carnegie Mellon University v. Marvell*, No. 2014-1492 (Fed. Cir.), where briefing is ongoing. In addition, Mr. Shumsky is counsel for the appellants in *DIRECTV v. Massachusetts*, No. SJC-11685 (Mass. App. Ct.), whose reply brief is due to the Massachusetts Supreme Judicial Court on August 11. Mr. Shumsky is also counsel for Morgan Stanley Wealth Management in *Morgan Stanley Wealth Management, et al., v. Riley*, No. B256177 (Cal. App. Div., 2nd Dist.). Morgan Stanley's opening brief in that appeal is due August 19. In addition to a variety of other, ongoing matters, Mr. Shumsky is

scheduled to be out of the country with his family from August 17-31, the arrangements for which were made long ago and are prepaid and nonrefundable.

9. This motion is being filed more than seven (7) calendar days before the original due date for the brief. *See* Fed. Cir. R. 26(b)(1).

CONCLUSION

For the foregoing reasons, the Court should grant Appellant Synopsys, Inc.'s motion for a 60-day extension, to and including October 3, 2014, to file its opening brief.

Dated: July 21, 2014

Respectfully submitted,

ORRICK, HERRINGTON &
SUTCLIFFE LLP

By: /s/ Eric A. Shumsky

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Counsel for Appellant Synopsys, Inc.

CERTIFICATE OF INTEREST

Counsel for Appellant Synopsys, Inc. certifies the following:

1. We represent Synopsys, Inc.
2. The name of the real party in interest (if the party named in the caption is not the real party in interest) represented: N/A
3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented: None.
4. The names of all law firms and the partners or associates that appeared for party or amicus now represented in trial court or agency or are expected to appear in this court are:

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Date: July 21, 2014

/s/ Eric A. Shumsky

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**DECLARATION OF ERIC A. SHUMSKY IN SUPPORT OF
APPELLANT SYNOPSYS, INC.'S MOTION FOR AN
EXTENSION OF TIME TO FILE ITS OPENING BRIEF**

I, Eric A. Shumsky, hereby declare:

1. I am a member of the firm Orrick, Herrington & Sutcliffe LLP, lead counsel for Synopsys, Inc.. I submit this declaration in support of Synopsys's motion for a sixty-day (60-day) extension of time to file its opening brief. I have personal knowledge of the matters set forth herein.

2. This is Synopsys's first request for an extension of time in this matter.

3. We request an extension due to the complexity of this case and to accommodate the press of other matters, including in this Court and in other appellate courts, as well preparation for trial in district court involving, among others, the '376 patent at issue in this appeal.

4. I am counsel for Carnegie Mellon University in *Carnegie Mellon University v. Marvell*, No. 2014-1492 (Fed. Cir.), where briefing is ongoing. In addition, I am counsel for appellants in *DIRECTV v. Massachusetts*, No. SJC-11685 (Mass. App. Ct.), whose reply brief is due to the Massachusetts Supreme Judicial Court on August 11. I am also counsel for Morgan Stanley Wealth Management in *Morgan Stanley Wealth Management, et al., v. Riley*, No. B256177 (Cal. App. Div., 2nd Dist.). Morgan Stanley's opening brief in that appeal is due August 19.

5. Patent litigation between the parties is also ongoing in the District of Oregon. *Synopsys, Inc. v. Mentor Graphics Corp.*, No. 3:13-cv-579-MO (D. Or.). Trial is scheduled for September 23, 2014.

Currently, the parties are briefing competing motions for summary judgment. Throughout August and early September, proposed jury

instructions and a verdict form, oppositions thereto, trial memoranda, lay witness statements, and expert reports are all due to be filed.

6. In addition to a variety of other, ongoing matters, I am scheduled to be out of the country with my family from August 17-31, the arrangements for which were made long ago and are prepaid and nonrefundable.

7. I contacted Bradley C. Wright, lead counsel for Cross-Appellant Mentor Graphics Corporation. Mr. Wright informed me that Mentor agrees to this request for an extension of time by Synopsys.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: July 21, 2014, in Washington, D.C.

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2014, I caused the foregoing document to be electronically filed with the Clerk of the Court using CM/ECF, which will automatically send notification of such filing to counsel of record.

Respectfully submitted,

/s/ Eric A. Shumsky

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